

3 March 1976

MEMORANDUM FOR: Assistant for Information, DDA
FROM: Chief, Information Systems Analysis Staff
SUBJECT: Comments on the Proposed Response
Relating to S. 2378

STAT

I do not agree that the Agency should oppose S. 2378. I believe that our response should be recast to at least accept if not endorse the establishment of a Commission to study all laws relating to classification and protection of information and our suggestions in a response to Senator Ribicoff should be designed to protect the Agency's vital interests. This would mean starting from scratch in preparing an Agency response. If draft reflects an already agreed upon Agency policy, however, I offer the following comments on the way it is drafted:

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a. Page two, first paragraph - I question the interpretation and the accuracy of the statement relating to a 50 percent reduction in classified material. Are we classifying 50 percent less of material previously considered classifiable or are we producing 50 percent less classified material by reason of a drop in the volume of material being produced? How was the 50 percent figure arrived at?

Executive Order 11652 was effective 8 March 1972. Four years later how can we say that it is still too early to evaluate the impact of this Order or that creation of a national commission on secrecy is premature? (Four years is the normal Presidential term to do everything a candidate promises to do)

b. Page 2, third paragraph - The statement relating to an apparent inconsistency in the Committee's right of access to material as compared to the one year hold on release of certain material is not so important that it should be treated early on in our response. The inconsistency is rather trivial

since the clear intent of the bill is to place a one year qualification on the otherwise unqualified right to access. I believe this matter should be mentioned--if at all--as an incidental comment toward the end of the letter.

c. Page 3, first paragraph - I suggest shifting these more significant points to a more prominent location in the letter--to reflect our principal objections and concerns at the beginning of the letter.

d. Page 3, second paragraph - The first two sentences of this paragraph do not track well. I suggest merging them to read something like: "I note that there is no provision in S. 2378 regarding the Commission's authority to release or declassify information which was obtained from executive agencies nor do I believe the Commission should have such authority. I believe, in fact, that such a limitation is so important that it should be specified in the legislation."

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LEGISLATIVE COUNSEL
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94TH CONGRESS
1ST SESSION

S. 2378

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18 (legislative day, SEPTEMBER 11), 1975

Mr. ROTH introduced the following bill; which was read twice and referred
to the Committee on Government Operations

A BILL

To establish a commission to study all laws, and executive branch rules, regulations, orders, and procedures, relating to the classification and protection of information for the purpose of determining their consistency with the efficient operation of the Government, including the proper performance of its duties by the Congress, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 ESTABLISHMENT OF COMMISSION

4 SECTION 1. There is hereby established the National
5 Commission on Executive Secrecy (hereinafter referred to
6 as the "Commission")

1

MEMBERSHIP

2

SEC. 2. The Commission shall be composed of seven
3 members appointed as follows:

4

(1) two appointed by the President of the Senate
5 from Members of the Senate;

6

(2) two appointed by the Speaker of the House
7 of Representatives from Members of the House of Rep-
8 resentatives; and

9

(3) three appointed by the President of the United
10 States from private life, not less than one of whom
11 shall be a representative of the press.

12 Members of the Commission shall be appointed within thirty
13 days following the date of enactment of this Act.

14

ADMINISTRATIVE PROVISIONS

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SEC. 3. The Chairman of the Commission shall be
16 elected from the membership by the members of the Com-
17 mission. Any vacancy in the Commission shall not affect its
18 powers but shall be filled in the same manner in which the
19 original appointment was made. Four members of the Com-
20 mission shall constitute a quorum for the transaction of
21 business.

22

DUTIES

23

SEC. 4. (a) The Commission shall—

24

(1) conduct a study of all laws, and of all rules,
25 regulations, and orders, relating to the classification and

1 protection of information, and the practices and proce-
2 dures of Federal agencies with respect to such matters
3 for the purpose of determining what reorganization, if
4 any, of the executive branch needs to be made to insure
5 full disclosure of information, consistent with the security
6 of the United States;

7 (2) determine which such laws, rules, regulations,
8 orders, and procedures are necessary, appropriate, and
9 consistent with (A) the freedoms of speech, press, and
10 assembly guaranteed by the first amendment to the Con-
11 stitution, (B) the provisions of section 552 of title 5,
12 United States Code, relating to freedom of information,
13 and (C) the efficient and equitable operation of Govern-
14 ment, including the proper performance of legislative
15 duties by the Congress of the United States, with due
16 regard to the protection of the security of the United
17 States;

18 (3) determine what, if any, modifications of exist-
19 ing laws, rules, regulations, orders, and procedures are
20 required to insure a more efficient, equitable, and uniform
21 system for maximum possible disclosure of information,
22 consistent with the security of the United States;

23 (4) make specific proposals for legislation or other
24 governmental action to preserve and protect the se-
25 curity of the United States in a manner consistent with

1 the right of the people of the United States to full dis-
2 closure of information relating to their Government;

3 (5) make specific proposals for legislation or other
4 governmental action to insure that the Congress receives
5 all information necessary for the proper performance of
6 its legislative responsibilities; and

7 (6) determine whether an independent agency
8 should be established to insure the maximum disclosure
9 of such information in a manner consistent with the na-
10 tional security, and present specific proposals relating
11 to the composition, duties, and powers of such an agency,
12 if the Commission determines that such an agency
13 should be established.

14 (b) The Commission shall make such interim reports
15 of its findings and recommendations as it deems advisable,
16 and it shall make a final and complete report of its findings
17 and recommendations to the Congress and the President not
18 later than March 1, 1974. Sixty days after the submission
19 of its final report, the Commission shall cease to exist.

20 POWERS

21 SEC. 5. (a) Subject to such rules and regulations as
22 may be adopted by the Commission, the Chairman shall
23 have the power to—

24 (1) appoint and fix the compensation of an Execu-
25 tive Director, and such additional staff personnel as he

1 deems necessary, without regard to the provisions of
2 title 5, United States Code, governing appointments in
3 the competitive service, and without regard to chapter
4 51 and subchapter III of chapter 53 of such title relat-
5 ing to classification and General Schedule pay rates,
6 but at rates not in excess of the maximum daily rate
7 of basic pay then currently being paid under the General
8 Schedule under section 5332 of such title;

9 (2) procure temporary and intermittent services to
10 the same extent as is authorized by section 3109 of title
11 5, United States Code, but at rates not to exceed \$100
12 a day for individuals; and

13 (3) hold such hearings, sit and act at such times
14 and places, administer such oaths, and require by sub-
15 pena or otherwise the attendance and testimony of such
16 witnesses and the production of such books, records,
17 correspondence, memorandums, papers, and documents
18 as the Commission may deem advisable. Any such
19 books, records, correspondence, memorandums, papers,
20 or documents which are classified or protected for any
21 reason by any agency of the executive branch shall be
22 transmitted to the Commission upon its request unless
23 such books, records, correspondence, memorandums,
24 papers, or documents were initially classified top secret
25 and were prepared within one year preceding the date

1 of the receipt of the request for such information from
2 the Commission.

3 (b) In the case of contumacy or refusal to obey a sub-
4 pena issued under subsection (a) (3) by any person who
5 resides, is found, or transacts business within the jurisdic-
6 tion of any district court of the United States, the district
7 court, at the request of the Chairman of the Commission,
8 shall have jurisdiction to issue to such person an order
9 requiring such person to appear before the Commission,
10 there to produce evidence if so ordered, or there to give
11 testimony touching the matter under inquiry. Any failure
12 of any such person to obey any such order of the court
13 may be punished by the court as a contempt thereof.

14 (c) The Commission shall be "an agency of the United
15 States" under section 6001 of title 18, United States Code,
16 for the purpose of granting immunity to witnesses.

17 (d) The Commission shall prescribe rules and regulations
18 relating to the protection of classified information in its cus-
19 tody. Each member of the Commission and any employee of
20 the Commission who is so authorized by a majority vote of
21 the members of the Commission may inspect any classified or
22 other information relevant to the duties of the Commission.

23 (e) In making appointments and procuring services
24 under subsection (a), the Chairman shall include individuals
25 who are competent lawyers, members of the press, and such

1 other persons who may be qualified to assist the Commission
2 in the performance of its duties.

3 COMPENSATION

4 SEC. 6. (a) A member of the Commission who is a Mem-
5 ber of Congress shall serve without additional compensation,
6 but shall be reimbursed for travel, subsistence, and other nec-
7 essary expenses incurred in the performance of duties vested
8 in the Commission.

9 (b) A member of the Commission from private life shall
10 receive \$125 per diem when engaged in the actual perform-
11 ance of duties vested in the Commission, plus reimbursement
12 for travel, subsistence, and other necessary expenses incurred
13 in the performance of such duties.

14 ASSISTANCE OF GOVERNMENT AGENCIES

15 SEC. 7. Each department, agency, and instrumentality
16 of the executive branch of the Government, including inde-
17 pendent agencies, is authorized and directed to furnish to the
18 Commission, upon request made by the Chairman, such data,
19 reports, and other information as the Commission deems nec-
20 essary to carry out its functions under this Act.

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 8. There are authorized to be appropriated such
23 sums as are necessary to carry out the provisions of this Act.